

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISAIAS R. ORTIZ,	§
	§
Defendant Below-	§ No. 539, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0210012072
Plaintiff Below-	§
Appellee.	§

Submitted: November 27, 2006

Decided: January 25, 2007

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 25th day of January 2007, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Isaias Ortiz, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State has filed a motion to affirm the judgment of the Superior Court, albeit for a reason other than that stated in the Superior Court's order denying Ortiz's motion. We agree and affirm the Superior Court's judgment on the independent and alternative ground that the issues raised in Ortiz's motion were procedurally barred by Superior Court Criminal Rule 61(i)(4).

(2) The record reflects that a Superior Court jury convicted Ortiz in October 2003 of seven drug-related offenses. This Court affirmed his convictions and sentence on direct appeal.¹ The mandate in that appeal issued on December 4, 2004. Consequently, for purposes of filing a petition for postconviction relief, Ortiz had three years from December 4, 2004 in which to file a timely postconviction petition under then-existing Superior Court Criminal Rule 61(i)(1). Although Rule 61(i)(1) was amended, effective July 1, 2005, to reduce the postconviction limitation period from three years to one year, that amendment is only applicable to cases in which the *conviction* was obtained after July 1, 2005. Consequently, the Superior Court erred in denying Ortiz's motion as untimely because the motion was filed in August 2006, within three years of his conviction becoming final upon the issuance of the mandate on direct appeal.

(3) Nonetheless, we conclude that Superior Court's denial of Ortiz's motion must be affirmed on the alternative and independent ground that his motion was procedurally barred by Superior Court Criminal Rule 61(i)(4). Under Rule 61(i)(4), the Superior Court is not required to reconsider claims that have been previously decided.² In his postconviction

¹ *Ortiz v. State*, 2004 WL 2741185 (Del. Nov. 16, 2004).

² *Riley v. State*, 585 A.2d 719, 721 (Del. 1990).

motion, Ortiz argued that the police search was invalid and that he should have been provided an interpreter at trial. Both of these issues were raised and rejected in Ortiz's direct appeal. Consequently, the Superior Court did not err in summarily denying Ortiz's motion as procedurally barred.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED on the independent and alternative ground that Ortiz's postconviction motion was procedurally barred by Superior Court Criminal Rule 61(i)(4).

BY THE COURT:

/s/ Jack B. Jacobs
Justice